

Federal Emergency Management Agency

Washington, D.C. 20472

MEMORANDUM FOR: Regional Directors
FEMA Regions I -X

ATTENTION: Mitigation Division Directors

FROM: David I. Maurstad
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DATE: 28-OCT-05

SUBJECT: Guidance For FEMA Regional Directors Regarding
"Extraordinary Circumstances" under which an
HMGP Project Grant may be awarded to Local
Jurisdictions without an Approved Local Mitigation
Plan.

This memorandum provides policy and guidance regarding 44 C.F.R. § 201.6(a)(3), which states:

Regional Directors may grant an exception to the plan requirement in extraordinary circumstances, such as a small and impoverished community, when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant termination will not be reimbursed by FEMA.

This section of the regulations should be used judiciously to provide HMGP project grant assistance in certain circumstances where the State supports the project as being consistent with the priorities and strategy identified in the approved State Mitigation Plan as well as being an essential component of the community's recovery. Each request for this exception must be evaluated on its own merits; and expectations for plan development and completion, as well as implications for grant funding, must be made clear to both the grantee and sub-grantee. It is intended that this policy be re-evaluated within five years.

Definitions

(1) **Completed plan:** A completed plan is one that has been adopted by the jurisdiction's governing body and has been approved by FEMA.

(2) **Extraordinary Circumstances:** An "extraordinary circumstance" exists when a determination is made by the State and the FEMA Regional Director that a jurisdiction either:

- (a) meets the criteria to be considered a small and impoverished community;
- (b) has been determined to have had insufficient capacity prior to the current disaster;
- (c) may have been considered to be at low risk from hazards; or
- (d) experienced significant disruption from the declared incident which impacts their ability to complete the planning process prior to award of a project grant.

Each of these circumstances is defined below:

(a) A jurisdiction meets the criteria for a small and impoverished community if it meets all of the following criteria:

- Must be a community of 3,000 or fewer individuals that is identified by the state as a rural community, and is not a remote area within the corporate boundaries of a larger city;
- Must be economically disadvantaged, with residents having an average per capita annual income not exceeding 80 percent of the national per capita income, based on best available data. (The Department of Commerce, Bureau of Economic Analysis (BEA) website states that the per capita personal income for the United States in 2003 was \$31,619.) More up to date information may be used. Please see the BEA website at: <http://www.bea.doc.gov>;
- Must have a local unemployment rate that exceeds by one percentage point or more the most recently reported, average yearly national unemployment rate. (According to the U.S. Bureau of Labor Statistics (USBL), the current average unemployment rate for 2004 is 6.0 percent. More up to date information may be used. Please see the USBL website located at: <http://stats.bls.gov/>; and,
- Must meet any other factors as determined by the State/Indian Tribe in which the community is located.

(b) A jurisdiction can be determined to have had insufficient capacity prior to the current disaster if:

- A State has determined that, within the area authorized for HMGP assistance, there exists an applicant (e.g., community or communities or Indian tribal government) that has been unable to satisfy the local mitigation planning requirement due to a lack of available funding, staffing, or other expertise necessary for that applicant to engage in the planning process as described at 44 C.F.R. Part 201, and in FEMA planning guidance. In these instances the State must identify in writing to the Regional Director the specific insufficient capacities that diminished the ability of the applicant to satisfy the local mitigation planning requirements.

- For each identified insufficient capacity, the State must explain why each deficiency is no longer an impediment to satisfying the local planning requirement, and identify the specific actions or circumstances that have eliminated the deficiency.

(c) A jurisdiction may have been considered to be at low risk from hazards due to low frequency of occurrence, or minimal damages from previous occurrences due to sparse development or low intensity of events, and does not have an approved mitigation plan. Over time, however, changing population patterns, increased growth in hazard areas, or other environmental factors may have been increased the jurisdiction's vulnerability to hazards.

(d) The State has determined that, within the area authorized for HMGP assistance, there exists an applicant (e.g., community or communities or Indian tribal government) that has been unable to satisfy the local mitigation planning requirement due to the significant magnitude of the declared incident. Specifically, these impacts have disrupted the jurisdiction's ability to complete the planning process.

Considerations for Granting the Exception

A Regional Director may grant an extraordinary circumstance exception for any jurisdiction that meets the definitions of (2) (a), (b), (c), or (d). In determining whether to grant the exception, the Regional Director should take into consideration factors including whether a State has prioritized their authorized HMGP project assistance for use in those communities with an approved Local Mitigation Plan consistent with 44 C.F.R. Sections 201.6 and 206.434(b), whether there are additional project funds available for award to a jurisdiction that does not have an approved Local Mitigation Plan, and whether a State has placed higher priority for grant funding on communities with higher risks.

In all cases, the State and community shall acknowledge in writing that a plan will be completed within 12 months of the award of the project grant. If a plan is not completed within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant termination will not be reimbursed by FEMA. The State must provide, to the Regional Director, a work plan for completing the Local Mitigation Plan, including milestones and a timetable, to ensure that the jurisdiction will complete the plan in the required time. This requirement shall be incorporated into the HMGP grant award (both the planning grant and project grant agreements, if a planning grant is also awarded).

Timeframes: This exception requires that a subgrantee must have a complete plan within 12 months from the project grant award. This means that the plan must be adopted by the subgrantee, and have received FEMA's approval. However, a subgrantee will likely have more than 12 months from the date of the disaster declaration to complete the plan. For example, a grantee may have up to 12 months from the day of the disaster declaration to submit a project application, per 44 C.F.R. § 206.436. Additionally, FEMA has 12 months to approve project applications. Generally, FEMA Regions must obligate a project grant within 24 months from the date of the disaster declaration.